

SHRI JASPAT ROY KAPOOR: Sir, I would like to know the view of the hon. Minister with regard to clause 3(1)(e). I think the words 'State Legislatures' should be added.

SHRI GULZARILAL NANDA: Well, I can answer that question. Sir, this part of the clause was introduced in the Lok Sabha, after the Bill had been introduced, at the instance of the Speaker. We discussed the matter, and that was the form which he suggested. The question with regard to State Legislatures also come up for consideration. But he explained to us that there was some difference between the procedure adopted here and that adopted in the State Legislatures. It will take time for me to explain. So, that rendered it unnecessary to bring in the State Legislatures. Appointments are made here by . . .

SHRI JASPAT ROY KAPOOR: Are we sure about all the State Legislatures? There are some State Legislatures . . .

MR. DEPUTY CHAIRMAN: Order, order.

SHRI JASPAT ROY KAPOOR: Sir, I am being ordered when I want some clarification and when I suggest something.

MR. DEPUTY CHAIRMAN: According to him, it is not necessary. According to the Government, it is not necessary.

Clauses 2 to 10 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI GULZARILAL NANDA: Sir, I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed."

DIWAN CHAMAN LALL (Punjab): Might I intervene at this stage?

MR. DEPUTY CHAIRMAN: We have already exceeded the time by 45 minutes. Therefore, not at this stage.

SHRI V. K. DHAGE (Bombay): Sir, when he wants to say something, he must be allowed to do that. He must be allowed that chance. It is his right.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE PUBLIC WAKFS (EXTENSION OF LIMITATION) BILL, 1959

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS): Sir, I beg to move:

"That the Bill to extend the period of limitation in certain cases for suits to recover possession of immovable property forming part of public wakfs, as passed by the Lok Sabha, be taken into consideration."

Sir, this is a very short measure of limited duration. It proposes to extend the period of limitation for a class of suits. If possession is claimed under the ordinary law of limitation, the period of limitation is twelve years, whether the suit is governed by article 142 or by article 144. So far as these public wakfs are concerned, Sir, it is felt that during the time of disturbances they did not enjoy adequate protection. The persons who were to protect the possessions had left the country. Therefore, Sir, in order to enable these persons to have the property restored to possession, it is proposed that the period of limitation, so far as these cases are concerned, should be extended up to the 15th of August, 1967. The conditions which would enable the application of this Bill are that the property should be forming part of the public wakfs,

and secondly, if the dispossession has taken place between the 14th of August 1957 and the 7th of May 1954, then that particular suit would be governed by clause 3, and the period of limitation would extend up to the 15th of August, 1967. Many of the suits, Sir, were likely to be barred by limitation before the Bill could become an Act. Therefore, an ordinance was issued for this purpose. Now this Bill proposes to repeal that ordinance. Sir, I move.

Mr. DEPUTY CHAIRMAN: Motion moved:

"That the Bill to extend the period of limitation in certain cases for suits to recover possession of immovable property forming part of public wakfs, as passed by the Lok Sabha, be taken into consideration."

SHRI B. K. P. SINHA (Bihar): Sir, I would like to point out some anomaly as between the Statement of Objects and Reasons and the body of the Bill. In the Statement of Objects and Reasons we are told that the period of limitation shall be extended in cases where dispossession has taken place between the 15th of August 1947 and the 7th of May 1954. Now the object is carried out by the first part of clause 3. The second part of clause 3 says:

"... or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period."

This clause extends protection to dispossessions which have taken place after the 15th of August, 1935. Therefore in such cases also this protection is extended. I would like to know whether this part of the clause has been inadvertently incorporated or it has been deliberately done. I feel that in such cases also it is proper to extend protection. I would like to know how this matter got in.

The second point is, the Statement of Objects and Reasons says that

where the properties have passed into unauthorised hands, the period of limitation shall end on 15th August, 1967. Now, I would like to ask if some of these properties are not under the charge of the State evacuee property administrators? Would, in such cases also, the parties or the plaintiffs have to take recourse to courts? If in such cases some other less expensive machinery than that of suits and courts is devised, I think that would have been better.

These are the only two matters on which I would like to get some clarification from the hon. Minister.

SHRI P. N. SAPRU (Uttar Pradesh): I would like to know why the State of Jammu and Kashmir has been excluded from the operation of this Bill. The usual practice now is to exclude Jammu and Kashmir. But I think the practice should be to include Jammu and Kashmir. I want greater integration of the State with us, of course, with the consent of the Government of that State. We were told that the Jammu and Kashmir Government was prepared to have the jurisdiction of the Supreme Court fully extended to them. We were told that the Jammu and Kashmir Government was prepared for the extension of the jurisdiction of the Election Commission to them. And there is the question of the status of the High Court. I am not going into all those questions. But as a matter of policy, it should be our endeavour to have legislation which operates in Jammu and Kashmir as well, and this can be done with the consent of the Jammu and Kashmir Government. I mean, we should be able to obtain the consent of that Government. That is the only point I wanted to raise.

سید فہد الحقہ انصاری (اتر)

پردیش) مستقر دیپٹی چیورمین - یہ

بل جو آج اس وقت ہمارے سامنے

پیش ہے اس کو میں سپورٹ کرتا

ہوں - یہ صرف اس لئے نہیں کہ یہ

[شری فریدالحق انصاری]

بل بہت چھوٹا سا ہے ، بہت آسان ہے اور نان کنٹروورشل ہے بلکہ اس لئے بھی کہ اس کی اس وقت سخت ضرورت تھی ۔ بہت سی وقف کئی جائیدادیں اس وقت بھی موجود ہیں جن پر کہ لوگ ناجائز طریقہ پر خلاف قانون قبضہ ہیں اور جب تک کہ لمیٹیشن کی میعاد بڑھائی نہیں جائیگی تب تک بہت سی نقصان ہوگا اور بہت سے لوگ مشکل اور مصیبت میں پھنسیں گے ۔ اس لئے اس گرانڈ پر اس بل کو میں سپورٹ کرتا ہوں ۔

سید مظہر امام (بہار) : مسٹر ڈپٹی چیئرمین ۔ میں بھی اس بل کی تائید کرتا ہوں ۔ جیسا کہ ہمارے دوست نے ابھی ہاؤس کے سامنے عرض کیا ہے اور جیسا کہ ایمس اینڈ ایجوکیشن میں بھی بتایا گیا ہے پارٹیشن کے بعد بہت سی وقف کی جائیدادیں ناجائز طریقہ پر لوگوں کے قبضہ میں آگئیں اور اس وقت بھی ہیں ۔ جو مسلمان یہاں رہ گئے ہیں انہوں نے اگر مطالبہ کیا ہے تو بعض بعض جگہ جائیدادوں کو وقف بورڈوں کے حوالہ کر دیا گیا ہے جو کہ اس وقت گورنمنٹ کے قبضہ میں ہیں اور ان کا انتظام میں سمجھتا ہوں کہ اچھی طرح سے ہو رہا ہے ۔ مگر بہت سی جائیدادیں ایسی ہیں جن کے لئے قانون بلانا پڑا ۔ اس لئے کہ ان کا قبضہ گورنمنٹ نہیں

لے سکی ۔ اس لئے یہ قانون یہاں بنایا جا رہا ہے ۔ یہ قانون مفید ہے اور ان جائیدادوں کو بچانے کے لئے اس میں پوری کوشش کی جا رہی ہے ۔ اس کے لئے میں گورنمنٹ کو مبارکباد دیتا ہوں اور اس بل کو سپورٹ کرتا ہوں ۔ اس کے ساتھ ساتھ میں لا منسٹر صاحب اور وقف کے انچارج جو انریبل منسٹر صاحب ہیں ان سے بھی یہ عرض کرنا چاہتا ہوں کہ اس بل کو بنانے کے معنی یہ ہیں کہ ٹائٹل سوٹ کو دائر کرنے کا حق آپ دے رہے ہیں ۔ لیکن اس کے ساتھ ساتھ گورنمنٹ کو اس صورت پر بھی غور کرنا ہے کہ اس کا متولی صحیح طریقہ سے کون ہوگا ۔ وقف بورڈ ہوگا یا اور کوئی خاص پرسن ہوگا ۔ یہ ہے کہ گورنمنٹ وقف بورڈ بنائیگی جو کہ اس چیز کو دیکھے گا ۔ اس کے ساتھ ساتھ ایک سوال یہ ہے کہ جہتک آپ یہ مراعات نہ دیں یہ کنسیشن نہ دیں کہ کم کورٹ فیس میں مقدمہ دائر کر سکیں تب تک مجھے اس بات کا تو ہے کہ اس قانون سے جو فائدہ ہونا ہے اس کو نہیں اٹھایا جا سکتا ۔ اس لئے میں لا منسٹر سے اور وقف کے لئے جو بزرگ منسٹر انچارج ہیں ان سے یہ عرض کرنا چاہتا ہوں کہ وہ اس بات پر غور کریں کہ کیا کورٹ فیس کے ایکٹ میں اس طرح کا پراویزن نہیں ہو سکتا ہے کہ وقف بورڈ یا کوئی مقدمہ دائر کرے تو اس کو کم کورٹ فیس دیلی ہو ۔ وہ

۲۲ روپیہ کے اندر ہی ہو جائے - پہار کی گورنمنٹ نے وہاں جو وقف بورڈی بدلے نہیں ان کو یہ اختیار دیا ہے کہ وہ ٹائٹل سوت لا سکتے ہیں اور اس کے لئے ۱۵ سے ۲۲ روپیہ تک کی کورٹ فیس میں ہی مقدمہ دائر کر سکتے ہیں اگر اس طرح کا قانون یہاں بھی بنائیں تو میں سمجھتا ہوں کہ اس قانون کا زیادہ سے زیادہ فائدہ ہوگا ورنہ مجھے اس بات کا ڈر ہے کہ روپیہ کی کمی کی وجہ سے بہت سی جگہ لوگ کورٹ فیس جمع نہیں کر سکیں گے اور اس کی وجہ سے بہت سے ٹائٹل سوت نہیں لا سکیں گے اور جائیداد کو واپس نہیں لے سکیں گے - اور اس طرح سے جو آپ نے ۱۹۴۷ تک کا وقت دیا ہے وہ ختم ہو جائیگا اور وہ جائیدادیں واپس نہیں ہونگی - اس لئے اس بل کی تائید کرنے کے ساتھ ساتھ میں گورنمنٹ سے یہ اپیل کرونگا کہ وہ میرے اس سنجیشن پر غور کرے اور میری اس اپیل کو منظور کرے تاکہ آسانی سے ان جائیدادوں کو بچایا جاسکے -

†[**آغا فeroz خان انصاری** (उत्तर प्रदेश): मिस्टर डिपुटी चैयरमैन ! यह बिल जो आज इस वक्त हमारे सामने पेश है उसको मैं सपोर्ट करता हूँ। यह सिर्फ इसलिये नहीं कि यह बिल बहुत छोटा सा है, बहुत आसान है और नोन-कन्ट्रो-वर्शियल है बल्कि इसलिये भी कि इसकी इस वक्त सख्त जरूरत थी। बहुत भी वक्फ की जायदादे इस वक्त भी मौजूद हैं जिन पर कि लोग नाजायज तरीके पर

खिलाफ कानून काबिज हैं और जब तक कि लिमिटेशन की मियाद बढ़ाई नहीं जायेगी तब तक बहुत ही नुकसान होगा और बहुत से लोग मुश्किल और मुमीबत में फंसेंगे। इसलिये इस प्राउन्ड पर इस बिल को मैं सपोर्ट करता हूँ।]

†[**सैयद मजहर इमाम** (बिहार): मिस्टर डिपुटी चैयरमैन ! मैं भी इस बिल की ताईद करता हूँ। जैसा कि हमारे दोस्त ने अभी हाउस के सामने अर्ज किया है और जैसा कि एम्ज एंड ओब्जेक्ट्स में भी बताया गया है, पाटीशन के बाद बहुत सी वक्फ की जायदादें नाजायज तरीकों पर लोगों के कब्जे में आ गईं और इस वक्त भी हैं। जो मुसलमान यहां रह गये हैं उन्होंने अगर मुतालबा किया है तो बाज-बाज जगह जायदादों को वक्फ बोर्डों के हवाले कर दिया गया है जो कि इस वक्त गवर्नमेंट के कब्जे में हैं और उनका इन्तजाम मैं समझता हूँ कि अच्छी तरह से हो रहा है, मगर बहुत सी जायदादें ऐसी हैं जिनके लिये कानून बनाना पड़ा। इसलिये कि उनका कब्जा गवर्नमेंट नहीं ले सकी। इसलिये यह कानून यहां बनाया जा रहा है। यह कानून मुफीद है और इन जायदादों को बचाने के लिये इसमें पूरी कोशिश की जा रही है। इसलिये मैं गवर्नमेंट को मुबारकबाद देता हूँ और इस बिल को सपोर्ट करता हूँ। इसके साथ-साथ मैं ला मिनिस्टर साहेब और वक्फ के इन्चार्ज, जो आनरेबिल मिनिस्टर साहेब हैं उनसे भी यह अर्ज करना चाहता हूँ कि इस बिल को बनाने के मायने यह है कि टाइटल सूट को दायर करने का हक आप दे रहे हैं। लेकिन इसके साथ-साथ गवर्नमेंट को इस मूल पर भी गौर करना है कि इसका मतबल्ली सही तरीके से कौन होगा। वक्फ बोर्ड होगा या और कोई खास परसन होगा। यह है कि गवर्नमेंट वक्फ बोर्ड बनायेगी जो कि इस चीज को देखेगा। इसके साथ-साथ एक

[संयद मजहर इमाम]

सवाल यह है कि जब तक आप यह मरागात न दें, यह कन्सेशन न दें कि कम कोर्ट फीस में मुकदमा दायर कर सकें तब तक मुझे इस बात का डर है कि इस कानून से जो फायदा होना है उसको नहीं उठाया जा सकेगा। इसलिये मैं ला मिनिस्टर से और वक्फ के लिये जो बजुर्ग मिनिस्टर इचार्ज हैं उनसे यह अर्ज करना चाहता हूँ कि वह इस बात पर गौर करें कि क्या कोर्ट फीस के एक्ट में इस तरह का प्रोवीजन नहीं हो सकता है कि वक्फ बोर्ड या कोई मुकदमा दायर करे तो उसको कम कोर्ट फीस देनी हो। वह २२ रुपये के अन्दर ही हो जाये। बिहार की गवर्नमेंट ने वहा जो वक्फ बोर्ड्स बनाये हैं उनको यह अस्त्रियाँ दिया है कि वह टाइटल सूट ला सकते हैं और उसके लिये १५ से २२ रुपये तक की कोर्ट फीस में ही मुकदमा दायर कर सकते हैं। अगर इस तरह का कानून यहां भी बनायें तो मैं समझता हूँ कि इस कानून का ज्यादा से ज्यादा फायदा होगा वरना मुझे इस बात का डर है कि रुपया की कमी की वजह से बहुत सी जगह लोग कोर्ट फीस जमा नहीं कर सकेंगे और उसकी वजह से बहुत से टाइटल सूट नहीं ला सकेंगे और जायदाद को वापिस नहीं ले सकेंगे और इस तरह से जो आपने १९६७ तक का वक्फ वक्त दिया है वह खत्म हो जायेगा और वह जायदादें वापिस नहीं होंगी। इसलिये इस बिल की ताईद करने के साथ साथ मैं गवर्नमेंट से यह अपील करूंगा कि वह मेरे इस सजेशन पर गौर करे और मेरी इस अपील को मंजूर करे ताकि आसानी से इन जायदादों को बचाया जा सके।]

SHRI R. M. HAJARNAVIS: Mr. Deputy Chairman, as regards the doubts which have been expressed by Shri Sinha, I wonder whether a Member possessing the legal acumen that he has, would seriously entertain any doubt as to whether both these clauses

are not really necessary whenever period of limitation for a suit for possession is being provided. He raised two questions, firstly as to the function of the clause relating to adverse possession. Secondly, he asked us as to what would happen, whether it would be necessary to file a suit where the property is being held by the Custodian of Evacuee Property. To both these questions, my answer is the same. A suit for possession is necessary where the right of possession is denied. Possession by itself does not give any right. It is the character of possession which determines whether a suit is necessary to be brought. If it is in the possession of the Custodian of Evacuee Property or is a permissive possession, or where property is *custodia legis*, then surely no suit is necessary, because the person in possession holds it for the real owner. If there is doubt about the title, he directs the claimant to establish the title and is ready to hand it over to him. So, the question would be, is the possession adverse, or has the possession become adverse? Then alone does the right to sue arise. It is not merely the possession of a right that gives a person the right to sue, but the possession of right accompanied by the denial of that right. Therefore, the mere fact that the defendant has been in possession earlier than the 14th day of August, 1947 would not prevent the application of clause 3 of this Bill. It would be necessary to determine as to when that possession became adverse. If possession became adverse during the stated period, then also clause 3 would apply. As I said in my opening remarks in this House, this Bill is intended to apply only to limited clauses of cases, where the right to sue arose for persons affected during these disturbed times. Ordinary suits will be governed by the ordinary law.

So far as the question of court fees is concerned, it is mainly a question which falls within the jurisdiction of the State legislature and in the State

List, and I am happy to find that in one State at least a nominal court fee has been provided for such suits. I am quite sure that the other State legislature would also follow suit.

But that, Sir, does not fall properly within the scope of this measure.

5 P.M.

I think the Members and the House for their unanimous approval of this measure.

DR. W. S. BARLINGAY (Bombay): But he has not answered Mr. Sapru's question, if I might remind him.

MR. DEPUTY CHAIRMAN: But Mr. Sapru is satisfied.

The question is:

"That the Bill to extend the period of limitation in certain cases for suits to recover possession of immovable property forming part of public wakfs, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI R. M. HAJARNAVIS: I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

SHRI ABDUR REZZAK KHAN (West Bengal): I want one minute, Sir.

AN HON. MEMBER: It is already five.

MR. DEPUTY CHAIRMAN: He will not take more than a minute.

श्री अब्दुल रज्जाक खान : मिस्टर डिप्टी चेरमैन, मैं अपनी पार्टी की तरफ से इस बिल को पूरी ताईद करता हूँ ।

एक माननीय सदस्य : इस वक्त इसके कहने की जरूरत नहीं है ।

श्री अब्दुल रज्जाक खान : इसके कहने की जरूरत नहीं थी लेकिन इस स्थान में कि कहीं दूसरी बदगुमानी पैदा न हो इसलिए मैंने यह अर्ज कर दिया ।

MR. DEPUTY CHAIRMAN: Any reply?

(After a pause)

The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Thursday, August 20, 1959.